

4/7/16

3:39 P.m.

Chapter No. 396
16/SS26/R395PS
LR 1 LR/18

SENATE BILL NO. 2211

Originated in Senate Liz Welch Secretary

SENATE BILL NO. 2211

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE MISSISSIPPI UNIFORM TRUST CODE AND THE MISSISSIPPI QUALIFIED DISPOSITION IN TRUST ACT; TO AMEND SECTION 91-8-103, MISSISSIPPI CODE OF 1972, TO CLARIFY AND COORDINATE THE STATUTORY PROVISIONS CONCERNING SETTLORS, BENEFICIARY SURROGATES, TRUST PROTECTORS, TRUST ADVISORS AND CERTAIN REPRESENTATIVES; TO AMEND SECTION 91-8-105, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT THERE ARE THREE ALTERNATIVE METHODS BY WHICH A TRUSTEE'S DUTY TO INFORM AND REPORT MAY BE WAIVED; TO AMEND SECTION 91-8-303, MISSISSIPPI CODE OF 1972, TO CLARIFY AND COORDINATE THE STATUTORY PROVISIONS CONCERNING SETTLORS, BENEFICIARY SURROGATES, TRUST PROTECTORS, TRUST ADVISORS AND CERTAIN REPRESENTATIVES; TO AMEND SECTION 91-8-401, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT A TRANSFER IN THE NAME OF THE TRUST IS LEGALLY SUFFICIENT; TO AMEND SECTION 91-8-407, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS FOR A MEMORANDUM OF TRUST IS SUFFICIENT TO CONSTITUTE CONSTRUCTIVE NOTICE; TO AMEND SECTION 91-8-409, MISSISSIPPI CODE OF 1972, TO CLARIFY THE ENFORCEMENT OF A NONCHARITABLE TRUST WITHOUT AN ASCERTAINABLE BENEFICIARY; TO AMEND SECTION 91-8-411, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PARTICIPATION OF THE QUALIFIED BENEFICIARIES IN MODIFICATION OR TERMINATION BY CONSENT; TO AMEND SECTION 91-8-703, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT TRUST ADVISORS AND TRUST PROTECTORS HAVE A DUTY TO KEEP OTHER FIDUCIARIES INFORMED; TO AMEND SECTION 91-8-814, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT THE TRUSTEE IS TO CONSIDER THE SPOUSE'S RESOURCES WHEN MAKING A DISCRETIONARY DISTRIBUTION WHEN THE SETTLOR IS STILL LIVING; TO AMEND SECTION 91-8-1012, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT A THIRD PARTY IS PROTECTED IN THE ABSENCE OF ACTUAL KNOWLEDGE THAT A TRUSTEE IS IMPROPERLY EXERCISING POWER; TO AMEND SECTION 91-8-1201,

MISSISSIPPI CODE OF 1972, TO EXPAND THE POWERS OF A TRUST PROTECTOR OR TRUST ADVISOR TO COORDINATE WITH ARTICLE 3, CHAPTER 8, TITLE 91, MISSISSIPPI CODE OF 1972, DEALING WITH REPRESENTATION OF BENEFICIARIES AND WITH ARTICLE 8, CHAPTER 8, TITLE 91, MISSISSIPPI CODE OF 1972, DEALING WITH THE DUTIES AND POWERS OF A TRUSTEE UNDER THE UNIFORM TRUST CODE; TO AMEND SECTIONS 91-9-503, 91-9-505 AND 91-9-507, MISSISSIPPI CODE OF 1972, TO RECOGNIZE AND CREATE AN EXCEPTION FOR QUALIFIED DISPOSITIONS IN TRUST; TO CREATE NEW SECTION 91-9-509, MISSISSIPPI CODE OF 1972, TO RECODIFY A PROVISION OF ARTICLE 11, CHAPTER 9, TITLE 91, MISSISSIPPI CODE OF 1972, THE FAMILY TRUST PRESERVATION ACT OF 1998, REPEALED IN THE 2014 REGULAR SESSION AND TO INCLUDE AN EXCEPTION FOR QUALIFIED DISPOSITIONS IN TRUST; TO AMEND SECTION 91-9-703, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF INVESTMENT ADVISOR AND CLARIFY THAT THE INVESTMENT ADVISOR SHOULD NOT BE INVOLVED IN DISTRIBUTION DECISIONS; TO AMEND SECTION 91-9-707, MISSISSIPPI CODE OF 1972, TO CLARIFY A CREDITOR'S ABILITY TO BRING AN ACTION AGAINST PROPERTY SUBJECT TO A QUALIFIED DISPOSITION IN THE ABSENCE OF INTENT TO DEFRAUD THE SPECIFIC CREDITOR; TO AMEND SECTION 91-8-1013, MISSISSIPPI CODE OF 1972, TO CORRECT A TYPOGRAPHICAL ERROR IN AN INTERNAL REFERENCE IN THE MISSISSIPPI UNIFORM TRUST CODE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 91-8-103, Mississippi Code of 1972, is amended as follows:

91-8-103. In this chapter:

- (1) "Action," with respect to an act of a trustee, includes a failure to act.
- (2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on July 1, 2014, or as later amended.
- (3) "Beneficial interest" means a distribution interest or a remainder interest; provided, however, a beneficial interest

specifically excludes a power of appointment or a power reserved by a settlor.

(4) "Beneficiary" means a person that:

(A) Has a present or future beneficial interest in a trust, vested or contingent; or

(B) In a capacity other than that of trustee, holds a power of appointment over trust property.

(5) "Beneficiary surrogate" means a person, including a trust protector or trust advisor, other than a trustee, designated by the settlor in the trust instrument or in a writing delivered to the trustee, or designated in a writing delivered to the trustee by a trust protector or trust advisor * * * with power under the terms of the trust instrument to receive notices, information, and reports otherwise required to be provided to a beneficiary under Section 91-8-813(a) and (b), or to represent a beneficiary under Section 91-8-303(8).

(6) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in Section 91-8-405(a).

(7) "Conservator" means a person appointed by the court to administer the estate of a minor or adult individual pursuant to Section 93-13-251.

(8) "Directed trust" means a trust where through the terms of the trust, one or more persons are given the authority to direct or consent to a fiduciary's actual or proposed investment

decision, distribution decision, or any other decision of the fiduciary.

(9) "Distribution interest" means:

(A) An interest, other than a remainder interest, held by an eligible distributee or permissible distributee under a trust and may be a current distribution interest or a future distribution interest;

(B) A distribution interest is classified as either a mandatory interest, a support interest or a discretionary interest; and although not the exclusive means to create each such respective distribution interest, absent clear and convincing evidence to the contrary, use of the example language accompanying the following definitions of each such respective distribution interest results in the indicated classification of distribution interest:

(i) A mandatory interest means a distribution interest in which the timing of any distribution must occur within one (1) year from the date the right to the distribution arises and the trustee has no discretion in determining whether a distribution shall be made or the amount of such distribution; example distribution language indicating a mandatory interest includes, but is not limited to:

a. All income shall be distributed to a named beneficiary; or

b. One Hundred Thousand Dollars
(\$100,000.00) a year shall be distributed to a named beneficiary;

(ii) A support interest means a distribution interest that is not a mandatory interest but still contains mandatory language such as "shall make distributions" and is coupled with a standard capable of judicial interpretation; example distribution language indicating a support interest includes, but is not limited to:

a. The trustee shall make distributions for health, education, maintenance, and support;

b. Notwithstanding the distribution language used, if a trust instrument containing such distribution language specifically provides that the trustee exercise discretion in a reasonable manner with regard to a discretionary interest, then notwithstanding any other provision of this subparagraph defining distribution interests, the distribution interest shall be classified as a support interest;

(iii) A discretionary interest means any interest that is not a mandatory or a support interest and is any distribution interest where a trustee has any discretion to make or withhold a distribution; example distribution language indicating a discretionary interest includes, but is not limited to:

a. The trustee may, in the trustee's sole and absolute discretion, make distributions for health, education, maintenance, and support;

b. The trustee, in the trustee's sole and absolute discretion, shall make distributions for health, education, maintenance, and support;

c. The trustee may make distributions for health, education, maintenance, and support;

d. The trustee shall make distributions for health, education, maintenance, and support; however, the trustee may exclude any of the beneficiaries or may make unequal distributions among them; or

e. The trustee may make distributions for health, education, maintenance, support, comfort, and general welfare;

f. A discretionary interest may also be evidenced by:

1. Permissive distribution language such as "may make distributions";

2. Mandatory distribution language that is negated by the discretionary distribution language contained in the trust such as "the trustee shall make distributions in the trustee's sole and absolute discretion";

g. An interest that includes mandatory distribution language such as "shall" but is subsequently

qualified by discretionary distribution language shall be classified as a discretionary interest and not as a support or a mandatory interest;

(C) (i) To the extent a trust contains distribution language indicating the existence of any combination of a mandatory, support and discretionary interest, that combined interest of the trust shall be divided and treated separately as follows:

a. The trust shall be a mandatory interest only to the extent of the mandatory distribution language;

b. The trust shall be a support interest only to the extent of such support distribution language; and

c. The remaining trust property shall be held as a discretionary interest;

(ii) For purposes of this subparagraph (C), a support interest that includes mandatory distribution language such as "shall" but is subsequently qualified by discretionary distribution language, shall be classified as a discretionary interest and not as a support interest.

(10) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(11) "Excluded fiduciary" means any trustee, trust advisor, or trust protector to the extent that, under the terms of a trust:

(A) The trustee, trust advisor, or trust protector is excluded from exercising a power, or is relieved of a duty; and

(B) The power or duty is granted or reserved to another person.

(12) "Fiduciary" means:

(A) A trustee, conservator, guardian, agent under any agency agreement or other instrument, an executor, personal representative or administrator of a decedent's estate, or any other party, including a trust advisor or a trust protector, who is acting in a fiduciary capacity for any person, trust, or estate;

(B) For purposes of subparagraph (A), an agency agreement includes, but is not limited to, any agreement under which any delegation is made, either pursuant to Section 91-8-807 or by anyone holding a power or duty pursuant to Article 12;

(C) For purposes of the definition of fiduciary in Section 91-8-103, fiduciary does not mean any person who is an excluded fiduciary as such is defined in Section 91-8-103.

(13) "Guardian" means a person appointed by the court pursuant to Section 93-13-13 or a parent to make decisions regarding the support, care, education, health, and welfare of a

minor or adult individual. The term does not include a guardian ad litem.

(14) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(15) "Internal Revenue Code" means the Internal Revenue Code of 1986, as in effect on July 1, 2014, or as later amended.

(16) "Jurisdiction," with respect to a geographic area, includes a state or country.

(17) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(18) "Power of appointment" means:

(A) An inter vivos or testamentary power to direct the disposition of trust property, other than a distribution decision made by a trustee or other fiduciary to a beneficiary;

(B) Powers of appointment are held by the person to whom such power has been given, and not by a settlor in that person's capacity as settlor.

(19) "Power of withdrawal" means a presently exercisable general power of appointment other than a power: (A) exercisable by a trustee and limited by an ascertainable standard; or (B) exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(20) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(21) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(A) Is a distributee or permissible distributee of trust income or principal;

(B) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date without causing the trust to terminate; or

(C) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(22) "Remainder interest" means an interest under which a trust beneficiary will receive property held by a trust outright at some time during the future.

(23) "Reserved power" means a power held by a settlor.

(24) "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(25) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one (1) person creates or contributes property to a trust, each person is a settlor of the portion of the trust property

attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(26) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.

(27) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(28) "Successors in interest" means the beneficiaries under the settlor's will, if the settlor has a will, or in the absence of an effective will provision, the settlor's heirs at law.

(29) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(30) "Trust advisor" means any person described in Section 91-8-1201(a).

(31) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(32) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

(33) "Trust protector" means any person described in Section 91-8-1201(a).

SECTION 2. Section 91-8-105, Mississippi Code of 1972, is amended as follows:

91-8-105. (a) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee or any other fiduciary under this chapter, relations among trustees and such other fiduciaries, and the rights and interests of a beneficiary. The terms of a trust may expand, restrict, eliminate, or otherwise vary the duties and powers of a trustee, any such other fiduciary, relations among any of them, and the rights and interests of a beneficiary; however, nothing contained in this subsection shall be construed to override or nullify the provisions of subsection (b). The rule of statutory construction that statutes in derogation of the common law are to be strictly construed shall have no application to this section. Except as restricted by subsection (b), pursuant to this section, courts shall give maximum effect to the principal of freedom of disposition and to the enforceability of trust instruments.

(b) The terms of a trust prevail over any provision of this chapter except:

(1) The requirements for creating a trust;

(2) The duty of a trustee to act in good faith in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries as the interests of such beneficiaries are defined under the terms of the trust, and that the trust have a purpose that is lawful and possible to achieve;

(4) The power of the court to modify or terminate a trust under Sections 91-8-410 through 91-8-416;

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in the Family Trust Preservation Act, Section 91-9-501 et seq.;

(6) The power of the court under Section 91-8-702 to require, dispense with, or modify or terminate a bond;

(7) The power of the court under Section 91-8-708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) Subject to subsection (d), the duty under Section 91-8-813(b) to notify beneficiaries of an irrevocable trust (including anyone who holds * * * a power of appointment) who have attained twenty-five (25) years of age that the trust has been established as set forth in that Section 91-8-813(b);

(9) Subject to subsection (d), the duty under Section 91-8-813(a)(1) and (2) to keep the beneficiaries (including anyone

who holds a power of appointment) informed and to respond to the request of a beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of the trust;

(10) The effect of an exculpatory term under Section 91-8-1008;

(11) The rights under Sections 91-8-1010 through 91-8-1013 of a person other than a trustee or beneficiary;

(12) Periods of limitation for commencing a judicial proceeding;

(13) The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

(14) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 91-8-203 and 91-8-204.

(c) Any purpose enunciated as a material purpose of a trust in that trust's trust instrument shall be treated as a material purpose of that trust for all purposes of this chapter.

(d) Notwithstanding subsection (b)(8) and (9) of this section, the duties of a trustee to give notice, information and reports under Section 91-8-813(a) and (b) may be waived or modified in the trust instrument or by the settlor of the trust, or a trust protector or trust advisor that holds the power to so

direct, directs otherwise in a writing delivered to the trustee in any of the following ways:

(1) By waiving or modifying such duties as to all qualified beneficiaries during the lifetime of the settlor or the settlor's spouse;

(2) By specifying a different age at which a beneficiary or class of beneficiaries must be notified under Section 91-8-813(b); * * * or

(3) With respect to one or more of the beneficiaries, by designating a beneficiary surrogate to receive such notice, information and reports who will act in good faith to protect the interests of the beneficiary or beneficiaries.

SECTION 3. Section 91-8-303, Mississippi Code of 1972, is amended as follows:

91-8-303. To the extent there is no material conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) A conservator or guardian may represent and bind the estate that the conservator or guardian controls;

(2) A conservator or guardian may represent and bind the ward if a conservator or guardian of the ward's estate has not been appointed;

(3) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(4) A trustee may represent and bind the beneficiaries of the trust;

(5) A personal representative of a decedent's estate may represent and bind persons interested in the estate;

(6) A parent may represent and bind the person's minor or unborn child if a conservator or guardian for the descendant has not been appointed;

(7) A grandparent may represent the grandparent's grandchild if that grandchild is not already represented by a parent under paragraph (6); and

(8) A person designated by the settlor either in the trust instrument or in a writing delivered to the trustee, or designated in a writing delivered to the trustee by a trust protector or trust advisor with power under the terms of the trust instrument to represent the beneficiaries of the trust, may represent and bind * * * the beneficiaries.

SECTION 4. Section 91-8-401, Mississippi Code of 1972, is amended as follows:

91-8-401. A trust may be created by:

(1) Transfer of property to another person as trustee or a transfer in the name of the trust during the settlor's

lifetime or by will or other disposition taking effect upon the settlor's death;

(2) Declaration by the owner of property that the owner holds identifiable property as trustee;

(3) Exercise of a power of appointment in favor of a trustee; * * *

(4) A court pursuant to its statutory or equitable powers; or

(5) * * * By an agent or attorney-in-fact under a power of attorney that:

(A) Expressly grants authority to create the trust; or

(B) * * * Grants the agent or attorney-in-fact the authority to act in the management and disposition of the principal's property that is as broad or comprehensive as the principal could exercise for himself or herself and that does not expressly exclude the authority to create a trust. An agent or attorney-in-fact may file a petition for the court to determine whether a power of attorney described in this section grants the agent or attorney-in-fact authority that is as broad or comprehensive as that which the principal could exercise for himself or herself.

SECTION 5. Section 91-8-407, Mississippi Code of 1972, is amended as follows:

91-8-407. (a) Except as provided in subsection (b) and except as required by a statute other than this chapter, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

(b) (1) No trust of or in any real property can be created except by a written instrument signed by the party who declares or creates such trust (the "settlor"), or by his last will, in writing. Every writing declaring or creating a trust in real property, other than a last will, may be acknowledged and proved as other writing and filed for record with the clerk of the chancery court in which the real property, or part of it, is located, and the filing shall serve as constructive notice of the existence and terms of the trust from and after filing.

(2) In lieu of filing the trust instrument or other writing declaring or creating a trust in real property, there may be filed with the clerk of the chancery court in which the real property, or part of it, is located a memorandum of trust signed by the settlor, trustee, or successor trustee and acknowledged or proved as other writings * * * and the filing of the memorandum of trust shall serve as constructive notice of the existence and terms of the trust from and after filing. The memorandum shall contain substantially all of the following information:

(A) The name of the trust;

(B) The street and mailing address of the office, and the name and street and mailing address and telephone number of the trustee;

(C) The name and street and mailing address and telephone number of the settlor of the trust;

(D) A legally sufficient description of all interests in real property owned by or conveyed to the trust;

(E) The anticipated date of termination of the trust or the event upon which the trust will be terminated; and

(F) The general powers granted to the trustee, which may be by reference to the statutory powers granted to the trustee under the terms of the trust instrument.

The memorandum may also contain the name and street and mailing address and telephone number of any successor trustee * * *. The memorandum of trust may be filed with the clerk of the appropriate chancery court either before or after a deed of conveyance of real property to the trust or trustee, in his capacity as such. The memorandum need not comply with subparagraph (D) if filed before or contemporaneously with a conveyance of any real property to the trust or trustee in his capacity as such, and need not be amended upon a subsequent conveyance of real property to the trust or trustee in his capacity as such, so long as the deed of conveyance is recorded in the appropriate county, and the recording of the deed of conveyance to the trust or trustee, as the case may be, shall

constitute compliance with subparagraph (D). In addition, the deed of conveyance may also serve as a memorandum of trust, or an amendment to the memorandum of trust, as the case may be, so long as the deed of conveyance contains the information required for a memorandum of trust as set forth in this subsection (b).

(3) The settlor may amend the memorandum if the trust to which it relates is subject to a power of amendment or revocation by the settlor; otherwise, only the then-serving trustee may amend the memorandum. The memorandum of amendment shall set forth the amendment to the original memorandum with particularity. The amended memorandum of trust may be made effective on a future date, which must be a date certain. The memorandum of amendment may be signed by the creator, trustee or successor trustee, as the case may be, and acknowledged or proved as other writings and filed for record with the clerk of the chancery court where the original memorandum is of record. The filing of the memorandum of amendment shall serve as constructive notice of the existence and terms of the amendment from and after filing.

(4) The provision of Sections 89-5-24 and 89-5-33 shall apply to any trust instrument, memorandum, or amendment that is to be recorded under this subsection (b).

(5) The provisions of this subsection (b) shall have no application to trusts of personal property, * * * or to any trust arising or resulting by implication of law out of a conveyance of

land. The failure to file a copy of the trust instrument, memorandum or deed of conveyance shall not affect the validity of the trust or the trust instrument.

(6) A certificate of trust containing the information set forth in Section 91-9-7 that was filed before July 1, 2014, shall be considered constructive notice of the existence and terms of the trust from and after its filing, and the filing of a memorandum of trust under Section 91-8-407(b) shall not be necessary.

(c) (1) All property originally brought into the trust or subsequently acquired by purchase or otherwise, on account of the trust, is trust property.

(2) Unless the contrary intention appears, property acquired with trust funds is trust property.

(3) Any estate in real property may be acquired in the trust name. Title so acquired can be conveyed in the trust name or by the trustees, as trustees of the trust.

(4) A conveyance to a trust in the trust name, though without words of inheritance, passes the entire interest in the property of the grantor unless the language of the conveyance reflects an intent to the contrary.

SECTION 6. Section 91-8-409, Mississippi Code of 1972, is amended as follows:

91-8-409. Except as otherwise provided in Section 91-8-408, Section 41-43-51 or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than twenty-one (21) years;

(2) A trust authorized by this section may be enforced by a person appointed under the terms of the trust, or if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

SECTION 7. Section 91-8-411, Mississippi Code of 1972, is amended as follows:

91-8-411. (a) During the settlor's lifetime, a noncharitable irrevocable trust may be modified or terminated by the trustee upon consent of all qualified beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust if the settlor does not object to the proposed modification or termination. The trustee shall notify the settlor of the proposed modification or termination not less than sixty (60) days before initiating the modification or

termination. The notice of modification or termination must include:

(1) An explanation of the reasons for the proposed modification or termination;

(2) The date on which the proposed modification or termination is anticipated to occur; and

(3) The date, not less than sixty (60) days after the giving of notice, by which the settlor must notify the trustee of an objection to the proposed modification or termination.

(b) Following the settlor's death, a noncharitable irrevocable trust may be terminated upon consent of all of the qualified beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the qualified beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(c) Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as agreed by the qualified beneficiaries.

(d) If not all of the qualified beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the modification or termination may be approved by the court if the court is satisfied that:

(1) If all of the qualified beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) The interests of a qualified beneficiary who does not consent will be adequately protected.

(e) Solely for purposes of this section, the term "noncharitable irrevocable trust" refers to a trust that is not revocable by the settlor with respect to which:

(1) No federal or state income, gift, estate or inheritance tax charitable deduction was allowed upon transfers to the trust; and

(2) The value of all interests in the trust owned by charitable organizations does not exceed five percent (5%) of the value of the trust.

(f) Notwithstanding subsection (a), the trustee may seek court approval of a modification or termination.

SECTION 8. Section 91-8-703, Mississippi Code of 1972, is amended as follows:

91-8-703. (a) Cotrustees who are unable to reach a unanimous decision after consultation among all the cotrustees may act by majority decision.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) A cotrustee must participate in the performance of a trustee's function and consult with the other cotrustees unless

the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may delegate to a cotrustee the performance of a function other than a function that the terms of the trust instrument expressly require the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g), a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee shall exercise reasonable care to:

(1) Prevent a cotrustee from committing a serious breach of trust; and

(2) Compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any

cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

(i) A trustee, trust advisor and trust protector shall keep each cotrustee, trust advisor, trust protector and any other fiduciary reasonably informed about the administration of the trust, to the extent the trustee, trust advisor or trust protector has knowledge that each such cotrustee, trust advisor, trust protector or other fiduciary does not have knowledge of the trustee's, trust advisor's or trust protector's actions, or regarding other material information or the availability of such information, related to the administration of the trust that would be reasonably necessary for each cotrustee, trust advisor, trust protector or other fiduciary to perform his or her duties as a trustee, trust advisor, trust protector or other fiduciary of the trust.

SECTION 9. Section 91-8-814, Mississippi Code of 1972, is amended as follows:

91-8-814. (a) Relative to exercise of powers over discretionary and other interests:

(1) "Improper motive" means to demonstrate action such as the following:

(A) A trustee refusing to make or limiting distributions to beneficiaries other than the trustee due to the

trustee's self-interest when the trustee also holds a beneficial interest subject to a discretionary interest; or

(B) A trustee making a distribution in excess of an ascertainable standard to himself or herself as beneficiary when the trustee is restricted by an ascertainable standard in the trust.

(2) Unless otherwise provided in the trust:

(A) If the settlor's spouse is named as a beneficiary, the * * * settlor is still living and the trust is classified as a support trust, then the trustee shall consider the resources of the settlor's spouse, including the settlor's obligation of support, before making a distribution; and

(B) In all other cases, unless otherwise provided in the trust, the trustee need not consider the beneficiary's resources in determining whether a distribution should be made.

(b) The following provisions apply only to discretionary interests:

(1) A discretionary interest is neither a property interest nor an enforceable right; it is a mere expectancy;

(2) A court may review a trustee's distribution discretion only if the trustee acts dishonestly, acts with an improper motive, or fails to act, if under a duty to do so;

(3) A reasonableness standard shall not be applied to the exercise of discretion by the trustee with regard to a discretionary interest;

(4) Other than for the three (3) circumstances listed in subsection (b)(2), a court has no jurisdiction to review the trustee's discretion or to force a distribution; and

(5) Absent express language in the trust instrument to the contrary, if the distribution language in a discretionary interest permits unequal distributions between beneficiaries or distributions to the exclusion of other beneficiaries, the trustee may distribute all of the accumulated, accrued, or undistributed income and principal to one (1) beneficiary in the trustee's discretion.

(c) The following provisions apply only to mandatory or support interests:

(1) A beneficiary of a mandatory or a support interest has an enforceable right to a distribution pursuant to a court's review;

(2) A trustee's distribution decision may be reviewed for unreasonableness, dishonesty, improper motivation, or failure to act, if under a duty to do so; and

(3) In the case of a support interest, nothing in this section shall raise a beneficiary's support interest to the level of a property interest.

(d) Unless otherwise provided in subsection (f), and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and

(2) A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(e) A power that is limited or prohibited by subsection (d) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(f) Subsection (d) shall not apply to:

(1) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(e) of the Internal Revenue Code, was previously allowed;

(2) Any trust during any period that the trust may be revoked or amended by its settlor; or

(3) A trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the Internal Revenue Code.

SECTION 10. Section 91-8-1012, Mississippi Code of 1972, is amended as follows:

91-8-1012. (a) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without actual knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(b) A person other than a beneficiary who in good faith assists a trustee or deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(d) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without actual knowledge that the trusteeship has terminated, is protected from liability as if the former trustee were still a trustee.

(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

SECTION 11. Section 91-8-1201, Mississippi Code of 1972, is amended as follows:

91-8-1201. (a) A trust protector or trust advisor is any person, and may be a committee of more than one (1) person, other than a trustee, who under the terms of the trust has a power or

duty with respect to a trust, including, but not limited to, one or more of the following powers:

(1) The power to modify or amend the trust instrument to achieve favorable tax status or respond to changes in any applicable federal, state, or other tax law affecting the trust, including, but not limited to, any rulings, regulations, or other guidance implementing or interpreting such laws;

(2) The power to amend or modify the trust instrument to take advantage of changes in the rule against perpetuities, laws governing restraints on alienation, or other state laws restricting the terms of the trust, the distribution of trust property, or the administration of the trust;

(3) The power to appoint a successor trust protector or trust advisor;

(4) The power to review and approve a trustee's trust reports or accountings;

(5) The power to change the governing law or principal place of administration of the trust;

(6) The power to remove and replace any trust advisor or trust protector for the reasons stated in the trust instrument;

(7) The power to remove a trustee, cotrustee, or successor trustee, for the reasons stated in the trust instrument, and appoint a successor;

(8) The power to consent to a trustee's or cotrustee's action or inaction in making distributions to beneficiaries;

(9) The power to increase or decrease any interest of the beneficiaries in the trust, to grant a power of appointment to one or more trust beneficiaries, or to terminate or amend any power of appointment granted in the trust;

(10) The power to perform a specific duty or function that would normally be required of a trustee or cotrustee;

(11) The power to advise the trustee or cotrustee concerning any beneficiary;

(12) The power to consent to a trustee's or cotrustee's action or inaction relating to investments of trust assets;

(13) The power to direct the acquisition, disposition, or retention of any trust investment;

(14) The power to terminate all or part of a trust;

(15) The power to veto or direct all or part of any trust distribution;

(16) The power to borrow money with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(17) The power to make loans out of trust property, including, but not limited to, loans to a beneficiary on terms and conditions, including without interest, considered to be fair and reasonable under the circumstances;

(18) The power to vote proxies and exercise all other rights of ownership relative to securities and business entities held by the trust;

(19) The power to select one or more investment advisors, managers or counselors, including, but not limited to, a trustee, and delegate to them any of its powers; * * *

(20) The power to direct the trustee with respect to any additional powers and discretions over investment and management of trust assets provided in the trust instrument * * *i

(21) The power to receive notices, information, and reports otherwise required to be provided to a beneficiary under Section 91-8-813(a) and (b);

(22) The power to represent and bind a beneficiary under Section 91-8-303(8) to the extent there is not material conflict of interest between the trust protector or trust advisor and the beneficiary; and

(23) The power to designate someone to represent and bind a beneficiary under Section 91-8-303(8) to the extent there is no material conflict of interest between the person designated and the beneficiary.

(b) The exercise of a power by a trust advisor or a trust protector shall be exercised in the sole and absolute discretion of the trust advisor or trust protector and shall be binding on all other persons.

(c) Any power of a trust advisor or trust protector to directly or indirectly modify a trust may be granted notwithstanding the provisions of Sections 91-8-410 through 91-8-412 and 91-8-414.

(d) An excluded fiduciary may continue to follow the direction of a trust protector or trust advisor upon the incapacity or death of the grantor of a trust to the extent provided in the trust instrument.

(e) Notwithstanding anything in this section to the contrary, no modification, amendment, or grant of a power of appointment with respect to a trust, all of whose beneficiaries are charitable organizations, may authorize a trust protector or trust advisor to grant a beneficial interest in the trust to any noncharitable interest or purpose.

SECTION 12. Section 91-9-503, Mississippi Code of 1972, is amended as follows:

91-9-503. Except as provided in Section 91-9-509, if the trust instrument provides that a beneficiary's interest in income or principal or both of a trust is not subject to voluntary or involuntary transfer, the beneficiary's interest in income or principal or both under the trust may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary.

SECTION 13. Section 91-9-505, Mississippi Code of 1972, is amended as follows:

91-9-505. Except as provided in Section 91-9-509, if the trust instrument provides that the trustee shall pay income or principal or both of a trust for the education or support of a beneficiary, the beneficiary's interest in income or principal or

both under the trust, to the extent the income or principal or both is necessary for the education or support of the beneficiary, may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary. This section shall not be applied or construed to limit or otherwise diminish a restraint on transfer that is valid under Section 91-9-503.

SECTION 14. Section 91-9-507, Mississippi Code of 1972, is amended as follows:

91-9-507. (1) Except as provided in Section 91-9-509, if the trust instrument provides that the trustee shall pay to or for the benefit of a beneficiary so much of the income or principal or both of a trust as the trustee in the trustee's discretion sees fit to pay, a transferee or creditor of the beneficiary may not compel the trustee to pay any amount from the trust that may be paid only in the exercise of the trustee's discretion. This subsection shall not be applied or construed to limit or otherwise diminish a restraint on transfer that is valid under Section 91-9-503.

(2) If the trustee has knowledge of a transfer of a beneficiary's interest in a trust or has been served with process in a proceeding for garnishment or attachment or the like by a judgment creditor seeking to reach a beneficiary's interest in a trust, and the trustee pays to or for the benefit of the beneficiary any part of the income or principal of the trust that may be paid only in the exercise of the trustee's discretion, the

trustee is liable to the transferee or creditor to the extent that the payment to or for the benefit of the beneficiary impairs the right of the transferee or creditor. This subsection does not apply if the beneficiary's interest in the trust is subject to a restraint on transfer that is valid under Section 91-9-503.

(3) This section applies regardless of whether the trust instrument provides a standard for the exercise of the trustee's discretion.

(4) Nothing in this section limits any right the beneficiary may have to compel the trustee to pay to or for the benefit of the beneficiary all or part of the income or principal of a trust.

SECTION 15. The following shall be codified as Section 91-9-509, Mississippi Code of 1972:

91-9-509. Settlor as beneficiary of own trust; invalid restraint on transfers; payments for education or support at trustee's discretion; maximum amount accessible by transferees or creditors. (1) Except as provided in Sections 91-9-701 through 91-9-723, if the settlor is a beneficiary of a trust created by the settlor and the settlor's interest in the trust is subject to a provision restraining the voluntary or involuntary transfer of the settlor's interest, the restraint is invalid against transferees or creditors of the settlor. The invalidity of the restraint on transfer does not affect the validity of the trust.

(2) Except as provided in Sections 91-9-701 through 91-9-723, if the settlor is a beneficiary of a trust created by

the settlor and the trust instrument provides that the trustee shall pay income or principal, or both, of the trust for the education or support of the beneficiary, or gives the trustee discretion to determine the amount of income or principal, or both, of the trust to be paid to or for the benefit of the settlor, a transferee or creditor of the settlor may reach the maximum amount of the trust that the trustee could pay to or for the benefit of the settlor under the trust instrument, not exceeding the amount of the settlor's proportionate contribution to the trust.

SECTION 16. Section 91-9-703, Mississippi Code of 1972, is amended as follows:

91-9-703. As used in this article, unless the context otherwise requires:

(a) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(b) "Creditor" means, with respect to a transferor, a person who has a claim.

(c) "Debt" means liability on a claim.

(d) "Disposition" means a transfer, conveyance or assignment of property, including a change in the legal ownership of property occurring upon the substitution of one (1) trustee for another or the addition of one or more new trustees.

"Disposition" also includes the exercise of a power so as to cause a transfer of property to a trustee or trustees, but shall not include the release or relinquishment of an interest in property that, until the release or relinquishment, was the subject of a qualified disposition.

(e) "Investment advisor" means a person given authority by the terms of a qualified disposition trust to direct, consent to or disapprove a * * * trustee's actual or proposed investment * * * decision.

(f) "Investment decision" means the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership of or rights in investments.

(g) "Person" means an individual, a corporation, an organization, or other legal entity.

(h) "Property" includes real property, personal property, and interests in real or personal property.

(i) "Qualified affidavit" means a sworn affidavit signed by the transferor before making a qualified disposition. In the event of a disposition by a transferor who is a trustee, the affidavit shall be signed by the transferor who made the original disposition to the trustee, or a predecessor trustee, in a form that meets the requirements of * * * subsection (n)(2) and (3) of this section and shall state facts as of the time of the original disposition.

(j) "Qualified disposition" means a disposition by or from a transferor to a qualified trustee or qualified trustees, with or without consideration, by means of a qualified disposition trust, after the transferor executes a qualified affidavit.

(k) "Qualified trustee" means a person who:

(1) In the case of a natural person, is a resident of this state, or, in all other cases, is authorized by the law of this state to act as a trustee and whose activities are subject to supervision by the Mississippi Department of Banking and Consumer Finance, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, or the Office of Thrift Supervision or any successor to them;

(2) Maintains or arranges for custody in this state of some or all of the property that is the subject of the qualified disposition, maintains records for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation of required income tax returns for the trust, or otherwise materially participates in the administration of the trust; and

(3) Is not the transferor.

(l) "Spouse" or "former spouse" means only persons to whom the transferor was legally married at, or before, the time the qualified disposition is made.

(m) "Transferor" means a person who, directly or indirectly, makes a disposition or causes a disposition to be made in such person's capacity:

(1) As an owner of property;

(2) As a holder of a power of appointment that authorizes the holder to appoint in favor of the holder, the holder's creditors, the holder's estate or the creditors of the holder's estate; or

(3) As a trustee.

(n) "Qualified disposition trust" means a trust instrument appointing a qualified trustee or qualified trustees for the property that is the subject of a disposition, which instrument:

(1) Expressly incorporates the law of this state to govern the validity, construction and administration of the trust;

(2) Is irrevocable; and

(3) Provides that the interest of the transferor or other beneficiary in the trust property or the income from the trust property may not be transferred, assigned, pledged or mortgaged, whether voluntarily or involuntarily, before the qualified trustee or qualified trustees actually distribute the property or income from the property to the beneficiary.

SECTION 17. Section 91-9-707, Mississippi Code of 1972, is amended as follows:

91-9-707. (a) Notwithstanding any law to the contrary, no action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity for an attachment or other provisional remedy against property that is

the subject of a qualified disposition or for the avoidance of a qualified disposition, unless the action is brought pursuant to the provisions of the Uniform Fraudulent Transfer Act, Section 15-3-101 et seq., and * * * unless the qualified disposition was also made with actual intent to defraud the creditor.

(b) (1) Notwithstanding Section 15-3-115, a creditor's claim under subsection (a) shall be extinguished:

(A) If the person is a creditor when the qualified disposition to a qualified disposition trust is made, unless the action is commenced within the later of two (2) years after the qualified disposition is made or six (6) months after the person discovers or reasonably should have discovered the qualified disposition; or

(B) If the person becomes a creditor after the qualified disposition to a qualified disposition trust is made, unless the action is commenced within two (2) years after the qualified disposition is made;

(2) If subsection (b)(1) applies:

(A) A person shall be deemed to have discovered the existence of a qualified disposition to a qualified disposition trust at the time any public record is made of any transfer of property relative to the qualified disposition, including, but not limited to, the conveyance of real property that is recorded in the office of the chancery clerk of the county in which the property is located or the filing of a financing

statement under Chapter 9, Title 75, * * * Mississippi Code of 1972, or the equivalent recording or filing of either with the appropriate person or official under the laws of a jurisdiction other than this state; and

(B) No creditor shall bring an action with respect to property that is the subject of a qualified disposition unless that creditor proves by clear and convincing evidence that the settlor's transfer of the property was made with the intent to defraud that specific creditor.

(c) For purposes of this article, a qualified disposition that is made by means of a disposition by a transferor who is a trustee shall be deemed to have been made as of the time, whether before, on, or after July 1, 2014, the property that is the subject of the qualified disposition was originally transferred to the transferor acting in the capacity of trustee, or any predecessor trustee, in a form that meets the requirements of Section 91-9-703(n) (2) and (3).

(d) Notwithstanding any law to the contrary, a creditor, including a creditor whose claim arose before or after a qualified disposition, or any other person shall have only the rights with respect to a qualified disposition as are provided in this section and Section 91-9-711, and neither a creditor nor any other person shall have any claim or cause of action against the trustee, an advisor of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting,

preparation, execution, or funding of a trust that is the subject of a qualified disposition. For purposes of this section, counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition includes the counseling, drafting, preparation, execution and funding of a limited partnership or a limited liability company if interests in the limited partnership or limited liability company are subsequently transferred to the trust that is the subject of a qualified disposition.

(e) Notwithstanding any law to the contrary, no action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against a trustee or an advisor of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition, if, as of the date the action is brought, an action by a creditor with respect to the qualified disposition would be barred under this section.

(f) In circumstances where more than one (1) qualified disposition is made by means of the same qualified disposition trust, then:

(1) The making of a subsequent qualified disposition shall be disregarded in determining whether a creditor's claim

with respect to a prior qualified disposition is extinguished as provided in subsection (b); and

(2) Any distribution to a beneficiary shall be deemed to have been made from the latest qualified disposition.

(g) If, in any action brought against a trustee of a trust that is the result of a qualified disposition, a court takes any action whereby the court declines to apply the law of this state in determining the effect of a spendthrift provision of the trust, the trustee of the trust shall immediately upon the court's action and without the further order of any court, cease in all respects to be trustee of the trust and a successor trustee shall succeed as trustee in accordance with the terms of the trust or, if the trust does not provide for a successor trustee and the trust would otherwise be without a trustee, a court of this state, upon the application of any beneficiary of the trust, shall appoint a successor trustee upon the terms and conditions it determines to be consistent with the purposes of the trust and this article. Upon the trustee's ceasing to be trustee, the trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust in accordance with this section.

(h) A trust that is the subject of a qualified disposition shall be subject to this section whether or not the transferor retains any or all of the powers and rights described in Section

91-9-709 or serves as an investment advisor pursuant to Section 91-9-717.

(i) (1) Notwithstanding any provision of subsection (a) or (b) to the contrary, the limitations on actions by creditors in law or equity shall not apply and the creditors' claims shall not be extinguished if the transferor is indebted on account of an agreement, judgment, or order of a court for the payment of one or more of the following:

(A) To any person to whom the transferor is indebted on account of an agreement or order of court for the payment of support or alimony in favor of the transferor's spouse, former spouse or children, or for a division or distribution of property in favor of the transferor's spouse or former spouse, but only to the extent of such debt;

(B) To any person who suffers death, personal injury, or property damage on or before the date of a qualified disposition by a transferor, if the death, personal injury, or property damage is at any time determined to have been caused, in whole or in part, by the tortious act or omission of either the transferor or by another person for whom the transferor is or was vicariously liable, but only to the extent of the claim against the transferor or other person for whom the transferor is or was vicariously liable;

(C) To the State of Mississippi or any political subdivision thereof, including, but not limited to, court-ordered restitution in a criminal matter; or

(D) To any creditor in an amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) if the transferor failed to maintain a One Million Dollar (\$1,000,000.00) umbrella policy as required by subsection (1).

(2) (A) A claim provided under this subsection (i) shall be asserted against a trustee only:

(i) Upon a final nonappealable determination of a Mississippi court or a fully domesticated, final nonappealable order of a court of another state that the debt is past due; and

(ii) After the court has determined that the claimant has made reasonable attempts to collect the debt from any other sources of the transferor or that any attempt would be futile.

(B) Nothing in this subsection (i)(2) shall be construed to prohibit the court from making the findings required in subsection (i)(2)(A) in the same proceeding and order.

(j) Subsection (i) shall not apply to any claim for forced heirship, legitime or elective share.

(k) In addition to provisions of subsection (j), to the extent subsection (j) applies to the laws of any foreign country:

(1) Neither a qualified disposition trust nor any disposition made subject to the terms of the qualified disposition trust is subject to the laws of any foreign country, nor is any such qualified disposition trust or the disposition void, voidable, liable to be set aside, or defective in any manner for any reason including, but not limited to:

(A) The law of any foreign country prohibits or does not recognize the concept of a qualified disposition trust; or

(B) The qualified disposition trust or disposition avoids or defeats any right, claim, or interest conferred by the law of a foreign country upon any person by reason of a personal relationship to the settlor or by way of heirship rights or contravenes any rule or law of a foreign country or any foreign country's judicial or administrative order or action intended to recognize, protect, enforce, or give effect to the right, claim, or interest.

(2) Relative to any foreign country or any interest in property arising or originating under the laws of any foreign country:

(A) No form of forced heirship, legitime, forced share or any similar heirship rights or form of transmission or transfer of property from a decedent or from a living person, or any restrictions on transmission or transfer of property from a decedent or a living person is recognized by this state; or

(B) No heirship rights described in subsection (k) (2) (A) conferred under the law of a foreign country shall constitute an obligation or liability, the transfer, conveyance or devise of which, would violate Chapter 3, Title 15, * * * Mississippi Code of 1972; and

(C) Subsection (k) (1) shall apply to all realty or other forms of immovable property physically in this state, as well as to all personal or movable property wherever situated if owned by a qualified disposition trust containing a state jurisdiction provision designating that the law of this state controls the qualified disposition trust;

(3) No judgment or other holding of any judicial body of any foreign country, including, but not limited to, any court, administrative body or other entity or organization purportedly having the power to make judicial or administrative decisions of any foreign country, shall be recognized or enforced or give rise to any equitable forms of relief, including, but not limited to, estoppel, to the extent the judgment or other holding concerns a qualified disposition trust containing a state jurisdiction provision designating that the law of this state controls the qualified disposition trust or to the extent the judgment or other holding concerns property held by the qualified disposition trust.

(4) Subsection (a) applies in addition to all other provisions of this article.

(1) The transferor shall obtain a general liability policy and, if applicable, a professional liability policy, and each policy must have a policy limit of at least One Million Dollars (\$1,000,000.00). Policy premiums must be paid by the transferor.

SECTION 18. Section 91-8-1013, Mississippi Code of 1972, is amended as follows:

91-8-1013. (a) Instead of furnishing a copy of the trust instrument to any person to evidence the existence and validity of the trust, the trustee may furnish to the person a certification of trust, signed by the trustee or trustees having signature authority as identified in paragraph (* * *6) of this subsection, attested by a notary public, and shall contain the following:

(1) An affirmation of the current existence of the trust and the date on which the trust came into existence;

(2) The identity of the settlor or settlors;

(3) The identity and address of the currently acting trustee or trustees and may contain the identity and address of the named successor trustee or trustees or a statement that no successor is named;

(4) The administrative or managerial powers of the trustee in a pending transaction or relevant to the request;

(5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(6) When there are multiple trustees or multiple successor trustees, the signature authority of the trustees

indicating whether all or less than all of the currently acting trustees are required to sign in order to exercise various powers of the trustee;

(7) Where there are successor trustees designated, a statement detailing the conditions for their succession or a statement that a third party may rely on the authority of one or more successors without proof of their succession;

(8) The trust's Taxpayer Identification Number, whether a social security number or Employer Identification Number, but only if the trust's identification number is essential to the transaction for which the request for the trust document is made;

(9) The name in which title to trust property may be taken; and

(10) A statement that, to the best of the trustee's knowledge, the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(b) The certification of trust shall not be required to contain the dispositive provisions of a trust that set forth the distribution of the trust estate.

(c) The trustee offering the certification of trust may provide copies of all or any part of the trust document and amendments, if any. Nothing in this section is intended to require or imply an obligation to provide dispositive provisions

of the trust or a copy of the entire trust documents and amendments.

(d) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting. A person who does not have actual knowledge that the facts contained in the certification of trust are incorrect may assume without inquiry the existence of the facts contained in the certification. Actual knowledge shall not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying on the trust certification. Nothing contained in this section shall limit the rights of the beneficiaries of the trust against the trustee. Any person relying on the certification of trust shall be indemnified from the assets of the trust to the extent of the share of the trust attributable to the beneficiary or beneficiaries bringing any action against the person for any costs, damage, attorney fees, or other expenses incurred in defending any action against the person arising for the transaction to which a certification of trust related.

(e) A person's failure to request a certification of trust does not affect the protections provided that person in this section. No inference that the person has not acted in good faith or that the person was negligent may be drawn from the failure of the person to request a certification of trust. Nothing in this section is intended to create an implication that a person is

liable for acting in reliance on a certification of trust under circumstances where the requirements of this section are not satisfied.

(f) Nothing in this section shall be construed to require a third party, when presented with a trust certificate, to enter into a contract with a trustee relating to trust assets or obligations, or to preclude a third party from demanding as a precondition to any contract that the trustee provide additional information in order to clarify any ambiguities or inconsistencies in the trust certificate.

(g) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

SECTION 19. This act shall take effect and be in force from and after July 1, 2014.

PASSED BY THE SENATE
February 25, 2016




PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 29, 2016



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

April 7, 2016
3:39 pm